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Attorney for Creditor Joseph Goveia

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:	}	Case No. 8:13-10664-CB
BARBARA, Joseph Anthony		Chapter 7
Debtor.		Notice of Opposition and Request for Hearing on Motion to Avoid Lien
		[LBR 9013-1(o)]
	}	Hearing requested

To the office of the United States Trustee, the Office of the Bankruptcy
Clerk, the Bankruptcy Court, the debtor, and all interested parties:

1. Debtor Joseph Goveia objects to debtor Joseph Anthony Barbara's
motion to avoid lien under 11 U.S.C. 522(f).
2. Debtor Joseph Goveia hereby requests that the court set this motion
for an evidentiary hearing and oral argument.

1 3. Goveia hereby gives notice to debtor that any reply to this opposition
2 must be filed with the court and served on the opposing party not
3 later than seven days prior to the hearing on the motion.

4 4. Goveia reserves the right to submit additional written evidence and
5 argument in opposition to the motion when it is noticed for hearing.

6 5. Goveia's opposition is based on this notice, the accompanying
7 declaration of appraiser Steve Millbern and his reports and reviews,
8 attached as exhibits to his declaration, the argument and reasons
9 presented below, and such other argument and evidence that may be
10 presented in opposition to the motion when it is noticed for hearing
11 or at the hearing on the matter.
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15 Grounds for this opposition.

16 As noted in the moving papers, creditor Joseph Goveia holds a
17 judgment lien security interest in the residence owned by debtor Joseph
18 Barbara. Goveia's recorded lien amount is \$229,402.17. The residence is also
19 encumbered with a first deed of trust held by Bank of America in the amount
20 of \$400,000. Barbara also contends that he is over 55 years of age and has no
21 income, and thus would be entitled to California CCP §704.730 exemption of
22 \$175,000.
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25 The only factual dispute in this motion is Barbara's claim that his
26 property has a value of only \$580,000 when the true fair market value is at
27 least \$685,000. If Barbara's valuation is used, Goveia's judgment lien would
28 be reduced to a remaining value of only \$5,000. If Goveia's valuation is used,

1 Goveia's judgment lien would be reduced to a remaining value of \$110,000.
2 [That is: \$685,000 – \$175,000 – \$400,000 = \$110,000.]

3 Barbara's claim that his property has a value of only \$580,000 is based
4 on an appraisal report by Thomas Garland, which is attached to the moving
5 papers. But that appraisal has many errors, and Garland's report itself
6 evidences that omissions were made to skew the results downward.

7 After creditor Goveia received Barbara's motion and the Garland
8 appraisal, Goveia had an independent appraiser of residential property review
9 the Garland appraisal. That review and new appraisal was done by Steve
10 Millbern, who is a California certified real estate appraiser, a member of the
11 Appraisal Institute since 1974, and who was awarded SRA designation in
12 1984. Mr. Millbern's review of the Garland appraisal is Exhibit 2 to this
13 opposition. Millbern's own appraisal of the property is Exhibit 3 to this
14 opposition.

15 Mr. Millbern found a number of problems in Garland's appraisal and
16 analysis. The most notable problems are that of the eight potential
17 comparables in the neighborhood, Garland selected only three – the three
18 with the lowest prices. A review of the map in Garland's appraisal report will
19 also show that Garland had originally had additional properties selected as
20 comparables (he has them identified on the map) but he removed them from
21 his analysis, which allowed him to lower his property valuation. Garland also
22 valued to adjust comparables upward when comparables had significant
23 adverse impacts or sales concessions.

24 In fact, after arriving at his artificially low \$585,000 number in his
25 comparable sales analysis, Garland then lowers the valuation another \$5,000
26 to a final value of \$580,000, without even trying to give an explanation for
27 this last reduction.

28 //

1 As summarized on pages 10 to 13 of Millbern's review [Exhibit 2] the
2 Garland appraisal includes the following problems:

- 3 • Misstates the zoning as SB-R1 when it is RHD-20.
- 4 • Says prices were stable when they were trending up.
- 5 • Misstates the property lot size.
- 6 • Skewed selection of comparables to lower appraised value
- 7 • Incorrectly adjusts comparables, by ignoring price concessions
- 8 and impairments in the comparables.
- 9 • Contradicts itself on whether the condition is average or below
- 10 average.
- 11 • It reaches a final value that falls below the unadjusted selling
- 12 prices of the comparable sales, which is contrary to standards in
- 13 the industry.
- 14 • Does not adjust comparables for the time of sales.
- 15 • Unexplained adjustments to the land's square foot value which
- 16 further lowered the appraised value of the property.

17
18 Because of these errors in the valuation, and the fact that these errors
19 appear to be intended and done to give an artificial lower valuation of the
20 property, the motion should be denied, or at least the value of the property
21 should be determined to be \$685,000 – which is the valuation given by
22 Millbern.

23 The Millbern valuation gives a more accurate valuation of the Barbara
24 property. All comparable sales were included in the appraisal, with the final
25 analysis excluding two sales which if included would have raised the
26 appraisal value. [See, Exhibit 3, pages 18 and 21.] The range of comparable
27 sales was between \$658,000 to \$721,000 with the mean and average to be
28 \$686,200. Millbern's valuation of \$685,000 is less than the median price.

1 Goveia therefore requests that the court deny Barbara's motion or, in
2 the alternative, use the Millbern valuation of \$685,000 as the value of
3 Barbara's property, and thereby reduce the Goveia judgment lien on the
4 Barbara property to \$110,000.

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7 Respectfully Submitted,

8 Dated: May 13, 2013

VOSS COOK & THEL, LLP

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11 Francis T. Donohue, III
12 Attorneys for Creditor Joseph Goveia
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Declaration of Steve Millbern

I, Steve Millbern, hereby declare:

1. I am a full time Real Estate Appraiser. My home office is located at 21142 Flametree, Lake Forest, CA 92630.

2. I have over 30 years of experience with residential real estate in Southern California, I hold Certified Appraisal license from the State of California and the SRA designation from the Appraisal Institute (certifying me as an expert in the appraisal of residential property). A copy of my curriculum vitae is attached as Exhibit 1 to this declaration.

3. I have reviewed the appraisal done by Tom Garland for the residential real property owned by Joseph Barbara located at 132 Dolphin Avenue in Seal Beach, California and have made my own independent appraisal of the property.

4. It is my professional opinion that the Fair Market Value (as defined in Treasury Department Regulation 20.2031-1b) of the property on 3/20/2013 was \$685,000. Mr. Garland's appraisal gives the property a "value" of \$580,000 as of that same date. My Appraisal Report is Exhibit 3 to this declaration. I have also drafted a review of the Garland appraisal. My Field Review of the Garland appraisal is Exhibit 2 to this declaration. Those documents contain the details of the scope of work, limiting conditions, and findings.

5. For the reasons set forth below and in my attached reports, it is my opinion that Mr. Garland's appraisal undervalues the property and his appraisal does not appear credible due to excessive errors and faulty methodology. My Field Review of his appraisal identified three major procedural issues that are incompatible with a bankruptcy assignment; eleven

1 errors; and seven value issues. The Field Review is Exhibit 2 to this
2 declaration and it contains the details of the scope of work, limiting
3 conditions, and findings. My comments and concerns about the Garland report
4 are on pages 10 through 13 of that Field Review.

5 6. Among the reasons I find Mr. Garland's appraisal undervalues the
6 property are the following:

7 a. The Garland appraisal selected the lowest possible comparable
8 sales. Other similar and equally located comparable sales and
9 listings were present at the time but were neither included or
10 commented upon. A search of the MLS revealed 8 potential
11 comparables, and the three selected for the appraisal had the
12 lowest prices. Selecting only the lowest sales among a selection of
13 equally comparable sales is inconsistent with the actions of peers
14 in the appraisal business.

15 b. There is evidence in the Garland appraisal that higher comparable
16 sales were originally included but were later removed without
17 comment or explanation. Examination of the location map in the
18 appraisal shows a total of 4 comps when only 3 are contained in
19 the final document. Specifically, a comparison of the addresses in
20 the location map to the addresses in the appraisal shows that the
21 addresses do not match the comp numbers as currently displayed
22 in the final appraisal.

23 Comp #4 on the map is now comp #2 in the appraisal.

24 Comp #3 on the map is now comp #1 in the appraisal.

25 Comp #2 on the map does not appear in the appraisal.

26 Comp #1 on the map does not appear in the appraisal.

27 c. The appraisal fails to note that comp #2 backs to a two story
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1 commercial building (the vacant Bay Theater) with adverse impact
2 (non-residential use). The appraisal failed to adjust for this factor.
3 If properly adjusted for this factor the indicated value would have
4 increased.

5 d. Comp #3 shows a sales concession of \$3,000 but no
6 corresponding adjustment was made.

7 e. The "Sales/Time" dates shown in the grid are closing dates. Peers
8 in the appraisal business adjust from contract dates rather than sale
9 dates because the contract dates represent the "meeting of the
10 minds" in establishing a price.

11 f. None of the comps were adjusted for time because the appraisal
12 incorrectly stated the market to be stable. In fact the market was
13 increasing and upward time adjustments should have been applied
14 to all three comparables (which would have resulted in higher
15 indicated values for the subject property).

16 g. Land was adjusted at \$75/sf with no support or comment. Unless
17 zoning would allow one of the comps to build a second unit there
18 is no indication that any adjustment at all is warranted. Had the
19 lots been adjusted appropriately a higher indicated value for the
20 subject property would have resulted.

21 h. The final concluded value falls below the unadjusted selling
22 prices of all the comps. Peers in the appraisal business as well as
23 both conventional and HUD/FHA guidelines indicate that a
24 reliable conclusion of value should be bracketed by the unadjusted
25 selling prices of the comparables.

26 i. The reconciliation of the value is flawed. The appraisal states that
27 the indicated value from the market approach is \$585,000. Yet the
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1 final conclusion of value is \$580,000. Somehow the value
2 declined \$5,000 for no reason.

3 j. The Garland appraisal contains a Cost Approach to value the
4 property, but it is not complete and not accurate for the following
5 reasons.

- 6 • The price per square foot figures used in the report are not
7 supported and he gives no indication of where he came up
8 with these numbers.
- 9 • The report makes reference to "Builders Cost.com" but
10 provides no documentation as required by USPAP.
- 11 • The report references conversations with builders but
12 contains no documentation as to who or when.
- 13 • The land value is stated to be determined by extraction and
14 further states that "the cost of the improvements were
15 subtracted from the sales price to determine land value."
16 This procedure for Extraction is incorrect per the definition
17 of "Extraction" found in the Dictionary of Real Estate
18 published by the Appraisal Institute (page 106) which states
19 that the depreciated cost of the improvements should be
20 deducted from the total selling price. The report does not
21 consider depreciation.

22
23 k. The report contains erroneous and makes false statements about
24 the neighborhood.

25 l. The neighborhood is rated as being "stable" for "property value
26 trends" and that in the last 12 to 16 months values have been
27 stable, when, in fact, the values have been increasing. I show the
28 trend lines in my Appraisal Report at pages 21 to 22 (Exhibit 3 to

1 this declaration.)

2 m. The market time is rated 3 to 6 months when in fact, similar
3 properties are selling in less than 30 days.

4 n. The "Present Land Use" is marked "100% One Family" in the
5 report when elsewhere in the neighborhood description the report
6 states "Approx. 20% of properties are units ranging from 2 on a lot
7 to medium size 1980's apartments".

8 o. The zoning is incorrectly shown as "SB-R1". Examination of the
9 zoning map available on the City of Seal Beach website indicates
10 the correct zoning is RHD-20.

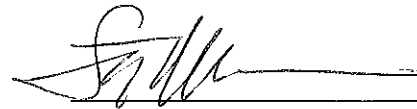
11 p. The appraisal correctly reports that the lot size is 25 x 100 but in
12 the comments section states "Subject lot is 37.5' wide which is
13 wider than normal size lot. Premium lot due to size." These
14 statements are false.

15 q. The appraisal states that it is determining value as "Most Probable
16 Value" (see page 22 of the Garland appraisal) but appraisals for
17 bankruptcy are supposed to be based on Fair Market Value, which
18 is defined in Treasury Department Regulation 20.2031-1(b) as
19 "Fair Market Value (FMV) is the price at which the property
20 would change hands between a willing buyer and a willing seller,
21 neither being under any compulsion to buy and sell and both
22 having reasonable knowledge of the relevant facts." Therefore the
23 appraisal does not have the definition of value required by the
24 court.
25

26 7. My valuation of \$658,000 for the subject property includes the
27 comparable sales ignored in the Garland appraisal and the valuation falls
28 within the range of indicated values for the property.

- 1 a. The range of indicated values from the Listings falls from
2 \$804,954 to \$837,000 with the "average" and the "mean" at
3 \$820,977. Therefore the upper limit of value for the subject
4 property (based on the principle of Substitution) from the Listings
5 is reconciled to \$820,000
- 6 b. The range of indicated values from the remaining Closed Sales
7 falls from \$658,000 to \$721,000 with the "average" and the
8 "mean" at \$686,200. A conclusion within the mid-range of the
9 indicated values from the Closed Sales was selected with most
10 weight given to the "mean" indicator (as none of the remaining
11 comps were considered more reliable than the others). The
12 valuation given by me is actually below the "mean."
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14 I declare under penalty of perjury that the information contained herein
15 is true and correct based on my personal knowledge and opinions. Executed
16 on May 13, 2013 in Newport Beach, California.
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20 Steven C. Millbern, SRA
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EXHIBIT 1

EXHIBIT 1

Curriculum Vitae

Steven C Millbern, SRA

Website: www.stevemillbern.net

Email: smillbern@cox.net

Voice: 949-900-6792

PROFESSIONAL EXPERIENCE - OVER 35 YEARS

Private Practice - Millbern & Associates

An independent valuation firm specializing in Southern California residential real estate. Provided over 10 years of valuation consulting services and appraisal reporting for litigation, bankruptcy, estate, date of death, divorce, retrospective, lending, and REO/foreclosure purposes. Experienced with complex properties and high dollar residences.

- Designated an expert witness in Orange County Superior Court in both testimony and depositions.
- Designated an expert witness for Federal Court in depositions for bankruptcy cases.
- Experienced in providing services for estate, divorce, bankruptcy, and litigation.

Corporate and Institutional Experience

Served over 13 years in the appraisal departments in both appraisal and management roles for national lenders including Wells Fargo Bank. Experience included banks, savings and loans, and mortgage companies and included all sectors from "A" paper to "Sub-Prime".

- Investigated, reported, and advised legal department on suspected loan fraud cases.
- Authored and implemented appraisal and quality assurance policy.
- Provided customer support and value dispute resolution.
- Provided appraiser and underwriter training.
- Performed appraisals of residential property throughout Southern California.
- Performed appraisal reviews on a national basis.

Independent Appraisal Employment Experience

Served over 12 years in both appraisal and management roles for independent fee appraisal firms.

- Served as the high dollar specialist on luxury and waterfront residences.
- Performed appraisals of residential property throughout Southern California.
- Supervised 10 appraisers and 5 support staff.
- Provided customer support and value dispute resolution.

UNIVERSITY EDUCATION

- California State University at Long Beach, Bachelor of Arts Degree 1972 Graduate.
- California State University at Fullerton, Certificate in Mortgage Lending 1994 Graduate.

VALUATION SPECIFIC EDUCATION

Successfully completed over 950 hours of specific valuation education from Colleges and recognized industry leading course providers (predominantly the Appraisal Institute and the former Society of Real Estate Appraisers) since 1973.

- Valuation Courses: Numerous courses from 30 to 70 hours representing 300 hours of instruction.
- Seminars, Workshops, and Correspondence Courses: Numerous offerings averaging 2 to 20 hours of instruction representing over 550 hours of instruction to date.
- Compliant with the mandatory continuing education requirement for the State of California.

- Compliant with the voluntary continuing education requirement for the Appraisal Institute.
- A detailed breakdown of educational qualifications and coursework is available upon request.

PROFESSIONAL MEMBERSHIPS, DESIGNATIONS, AND LICENSES

- California State Certified Real Estate Appraiser #AR001606 since 1991.
- Member of the Appraisal Institute since 1974. Awarded the SRA designation in 1984.
- Associate Member, Orange County Bar Association since 2008 to the Family Law, Commercial Law and Bankruptcy, Tax Law, and Trust & Estates sections.

APPRAISAL INSTITUTE ACTIVITIES

- | | |
|--|-----------|
| • AI Candidate Guidance Committee | 1988-1990 |
| • AI Newsletter Committee | 1991-1994 |
| • AI Chapter Board of Directors | 1992-1994 |
| • AI California State Govt. Affairs Committee | 1992-1995 |
| • AI Chapter Regional Representative | 1992-1995 |
| • AI Rep to California Coalition of Appraisers | 1993-1994 |

PUBLICATIONS

- Published over 20 articles on technical valuation issues & government affairs topics in the Southern California Appraisal Institute Newsletter.

COMPUTER SKILLS

- Excel spreadsheets, Microsoft Word, and other Microsoft Office Group programs.
- Gnumeric spreadsheets for trend and valuation analysis and support.
- MLS software for all Southern California MLS Boards, reciprocal access throughout California.
- Digital Photography & Electronic Transmission of Appraisals.
- RealQuest, DataQuick, Metroscan, AIRD, & other public records systems
- DaVinci and Apex building sketch software.
- A La Mode / Win2000 appraisal software.

COMMUNITY SERVICE ACTIVITIES

- Certified Disaster Relief Worker, Southern Baptist Western Region since 2006.
- Katrina Relief experience in 2005.
- Poverty Relief, Oaxaca Mexico 2004 and 2006.
- Disaster Relief, Southern California Wildfires 2008.
- Local Community Volunteer efforts:
 - Second Harvest Food Bank
 - City of Lake Forest Paint Day
 - Ontario Tent City Feeding Center